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Phone Programs Inc.
40 Elmont Road
Elmont, New York 11003

VIA FEDERAL EXPRESS
April 16, 1993

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Attention: Donna R. Searcy

Re: In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act
CC Docket No. 93-22 (RM-7990)

Dear Ms. Searcy:

On behalf of Phone Programs, Inc., enclosed are an original and nine (9) copies of Phone Programs' comments in the above docket.

Very truly yours,

Carol Brennan

Carol Brennan
Vice President
Legal Affairs

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	CC Docket No. 93-22
Policies and Rules Implementing	)	RM-7990
the Telephone Disclosure and	)	
Dispute Resolution Act	)	

COMMENTS OF PHONE PROGRAMS, INC.

Phone Programs, Inc. ("PPI") is an Information Provider ("IP") of pay-per-call services with over 20 years experience in the industry. We understand that the intent of this rulemaking is the fulfillment of the FCC's charge to implement regulations governing the provision of pay-per-call services by common carriers as outlined in the The Telephone Disclosure and Dispute Resolution Act ("TDDRA").

To more fully understand our interest in this rulemaking, please bear in mind that the IP produces the pay-per-call service. It is responsible for the content of the program, i.e., information, entertainment, instruction or sweepstakes and for the advertising and promotion of the service. It must, however, rely on the services of the common carrier to 1) transport the consumer's call to its equipment; 2) bill and collect the designated charge of the call; 3) answer questions and/or resolve billing inquiries and requests for credit from the consumer; and 4) remit to the IP any revenues

from the calls which remain once the carrier has deducted its charges. The outcome of this rulemaking will directly impact our operations and the economic viability of our business.

In its Report and Order,[1] the Commission demonstrated a keen sensitivity to the advantages and disadvantages of our industry as well as a thorough understanding of the particular characteristics and specific needs inherent in the development, promotion and implementation of an interstate pay-per-call program. We respectfully request that the Commission maintain this special insight during this rulemaking and bear in mind that any additional expenses incurred by the carrier to implement new rules will be passed on to the IP. Since the IP already operates on a low profit margin, i.e., the profit per call is minimal, any additional costs could make the difference between profit versus loss for a program. The Commission has stated its intent to rule in the "most efficient and least disruptive and burdensome means." The future of our business and our industry relies on this goal and we offer our comments, an IP's perspective, to assist the Commission to achieve this end.

1 In Re Policies and Rules Concerning Interstate 900 Telecommunications Services, Report and Order, 6 FCC Rcd. 6166 (1991) ("Report and Order").

THE PREEMPTION ON PREAMBLE MESSAGES MUST BE RETAINED

The success of the uniform preamble message established by the Report and Order is undisputed. It fulfilled the Commission's intent to inform the consumer of the contents and cost of the call together with an opportunity for the caller to disconnect before incurring any charge. At the same time it gave the IP a uniform preamble standard for

broadcast equipment to recognize an incoming call from a particular state and then match that call to the appropriate preamble message. The amount of memory and software configuration needed for this mix and match would be impractical for a short duration, low priced call. Add to this the production expenses generated by multiple scripting, voice talent and studio time and it is clearly apparent that an IP could no longer offer low cost, reasonably priced pay-per-call programs to the masses. Thus, the intent of pay-per-call programs: immediate and easy access by the masses to information and entertainment at affordable rates would be defeated. The preemption is fair and reasonable. It has proven successful. It has achieved its intent to inform the consumer and provide a uniform regulation for the IP. It must be maintained for the benefit of all.

THE STRINGENT NPA AND OFFICE CODE DESIGNATIONS MIGHT BE SHORTSIGHTED AND COUNTER-PRODUCTIVE

PPI favors limiting pay-per-call numbers to the 900 prefix whenever possible. Recent surveys, including one conducted by Louis Harris in January, 1993, indicate that a majority of the public understand that a premium charge is associated with the use of 900 numbers. We are concerned that the introduction of a new pay-per-call prefix, if improperly handled, will invite the scams and con artists to return and

start again thus rendering our efforts to turn the industry

THE FCC SHOULD PROVIDE SPECIFIC CONDITIONS FOR PRESUBSCRIPTION AND CARRIER TERMINATION PROCEDURES

For its own business needs, PPI believes that presubscription would be the death knell for our programs. Our customers, while informed and knowledgeable about the contents and cost of our programs, do not have those characteristics, i.e., long range planning or patience, to take the time to enter into an agreement which would permit future access to a program. Our callers are demanding, impatient and quick to act. They would not use the presubscription feature. Also, in certain circumstances, the content of our program, i.e., topical and timely, would not permit the time lag needed to allow for prior agreements to be put into place. PPI strongly opposes any legislation and/or regulation which would require presubscription. However, we do recognize that certain sectors of our industry might find presubscription useful and we can't rule out the possibility that our future programming endeavors might warrant a presubscription feature.

For these unique programs, we are comfortable with the FCC's interpretation of a presubscription arrangement as one which denotes an agreement made prior to the initiation of a call. Since PPI has witnessed subjective interpretation of many a federal and state authority's rule, we ask that this interpretation be included in the rule and the conditions set

forth by NAIS[2] be adopted so that there can be no misinterpretation or misunderstanding of this definition 5 years from now.

For similar reasons, PPI requests that the FCC clearly set specific termination standards and procedures which the carrier must address in its tariff or contract applicable to pay-per-call services. We oppose any generalities which would leave the carrier free to develop its own interpretation and impose its hand in our business. The carrier is not a policeman nor an enforcement agency, it should not have the complete freedom to disconnect a pay-per-call program without proof of a specific violation. TDDRA's phrase "knows or reasonably should know" must be clarified. The FCC must delineate specific standards whereby a carrier cannot terminate a pay-per-call program until the IP of that program has been given due process. If, after due process, it is determined that the program has violated a law or regulation, then, and only then, should a carrier be permitted to disconnect the program. The carrier cannot

2 The NAIS suggests that 3 criteria must be satisfied to determine "presubscribed." These are: 1) the consumer must be informed of all material terms and conditions of using the service; 2) the consumer must agree to utilize the service under the terms and conditions specified by the IP; and 3) an access code or other mechanism must be used to restrict non-subscribers from accessing the service.

have the discretion to terminate on a "reasonably should know" basis, it would discriminatory to the IP and give the carrier overbroad authority.

THE CURRENT BLOCKING RULE DOES NOT NEED TO BE CHANGED, IT HAS PROVEN EFFECTIVE AND CONFORMS TO TDDRA

In its Report and Order, the FCC implemented standards which provide blocking to consumers without imposing an undue economic burden on the carriers and IPs. The FCC noted that where carriers could not implement blocking due to technical limitations, the carriers could wait until the equipment was due to be replaced to implement this capability. This is a sensible rule, one that has worked effectively, and one which should be retained. From the FCC's notice, it appears to PPI that the Commission believes TDDRA requires more specificity on blocking than that already in place. We disagree, and offer that although TDDRA suggests more detailed blocking, it also notes that technical and economic limitations should be a consideration when implementing its rules. We request that the FCC continue its present rule. It is working. It has proven effective. More detailed or specific requirements are unnecessary and exceed the intent of TDDRA. Anything more

costs would be transmitted to the IP. The current equipment replacement procedure of including the blocking feature with other changes is sufficient to fulfill TDDRA's requirements. As for selective blocking, it is PPI's opinion that if the carriers develop a way to offer selective blocking to callers, i.e., block certain numbers but not all pay-per-call services, then that too should be made available to consumers, but not at the expense of the IP.

THE CARRIERS SHOULD NOT BE FORCED TO DISCLOSE AND DISSEMINATE ADDITIONAL INFORMATION

Currently, each carrier offers a local or toll free number whereby a consumer may request information about a certain program and/or IP. TDDRA is quite explicit about the information the carrier must furnish. This list includes a) a list of the telephone numbers for each of the pay-per-call services it carries; 2) a short description of each such service; c) a statement of the total cost or the cost per minute and any other fees for each such service; and d) a statement of the pay-per-call service's name, business address and business telephone. TDDRA also provides for the Commission to add to this list. We believe any additions are unnecessary. The list is complete in that a caller seeking information about a particular program or program producer can acquire this information from the carrier. The carrier

is not an IP's partner, it is in essence, its sub-contractor, and excluding its ability to issue credits, the carrier should not be permitted to speak on behalf of the IP. Any inquiries, comments and/or complaints a consumer has should be directed to the IP. The addition of any other information would be unnecessary, of questionable use and only require the carrier to make some changes, the costs of which, would be passed along to the IP.

PPI has no objection if the carrier wishes to initiate, at its own expense, a consumer education campaign. We strongly oppose any proposal that would require carriers to provide additional disclosure requirements or consumer education campaigns. These suggestions exceed TDDRA's requirements and would impose an unnecessary and costly burden on the IP.

COLLECT CALLS FOR PAY-PER-CALL SERVICES SHOULD BE PROHIBITED

PPI supports the proposal that would prohibit a pay-per-call provider from initiating a call and then charging the caller for such call. From a businessman's perspective this is an example of the fraudulent and abusive practice which gave our industry a black eye. Our goal is to achieve a popular program supported by callers who know and want the message provided and who are willing to pay a premium charge for the immediate and easy access to that program. We cannot grow and develop an industry predicated on fraud and deceit.

Pay-per-call services should be limited to those calls the customer initiates.

ADDITIONAL PAY-PER-CALL INFORMATION ON THE BILL IS UNNECESSARY

The FCC seeks comments on the viability and need to require carriers to include more information on the bill in addition to the type of service, amount of the charge and the date, time, and duration of call as required by TDDRA. Additional information is unnecessary and would cause the IP an undue economic hardship. Current billing information provides the customer with sufficient data to understand the charge. In addition, the local or toll free number is available if the customer has any question. PPI notes that credit card billing is not required to provide anything beyond the information now provided on pay-per-call services. If the Commission were to impose additional data requirements solely for pay-per-call services, this imposition would discriminatory and anti-competitive.

THE FORGIVENESS/REFUND PROCEDURE REQUIRES ADDITIONAL CONSIDERATION

PPI urges the Commission to proceed carefully when dealing with wholesale refunds. We are concerned that the carriers are being burdened with unnecessary obligations which, in turn, will increase our costs. A carrier is not the police nor does it have the powers of an enforcement agency. It is our understanding that in a class action suit general proceddure requires an affirmative action by the aggrieved. If a consumer believes that he is entitled to a refund because a pay-per-call program was in violation of the law, then it is incumbent upon the consumer to notify the carrier. We do not wish to defraud the consumer, but the idea of making the carrier liable for informing every caller that he might be entitled to a refund is too onerous. There are consumer notices and product callbacks issued every day, the car dealer, grocery store or distributor is not required to contact every person who might have purchased a defective product. The carrier should not be burdened with a task not imposed on other middlemen.

If it has been adjudicated that an IP violated federal law, then the IP should be required to publish a notice to

exceeds time given to credit card holders or bank account inquiries. Please note we stated "adjudicated." The IP must have had been found or admitted guilt according to due process. Anything short of this, is an infringement upon the IP's rights.

THE INVOLUNTARY BLOCKING STANDARD IS FAIR AND REASONABLE

PPI appreciates the Commission's recognition that an IP must have the means to protect itself against caller abuse and believes the language proposed is fair and reasonable.

CONCLUSION

PPI supports the intent of TDDRA. We believe that many of its goals have already been achieved through the first FCC Rule in combination with a concerted effort by the industry to rid itself of fraudulent and deceitful practitioners and educate the public as to the benefits and costs associated with calls to pay-per-call services. The current rule and industry standards are working, have proven effective and need little change. We understand the task TDDRA imposes on the FCC and we suggest that the few additional items TDDRA addresses can be implemented with little or no change in a

discretion to terminate program or apply credits; we need this same uniform regulation applied in these areas as well.

PHONE PROGRAMS, INC.

By: Carol A. Brennan
Carol A. Brennan
Vice President
Legal Affairs

Dated: April 16, 1993